

(15) The term “commercial component” means any component that is a commercial item.

(16) The term “acquisition”—

(A) means the process of acquiring, with appropriated funds, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

(B) includes—

(i) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

(ii) the description of requirements to satisfy agency needs;

(iii) solicitation and selection of sources;

(iv) award of contracts;

(v) contract performance;

(vi) contract financing;

(vii) management and measurement of contract performance through final delivery and payment; and

(viii) technical and management functions directly related to the process of fulfilling agency requirements by contract.

(17) The term “Federal Acquisition Regulatory Council” means the Federal Acquisition Regulatory Council established under section 421 of this title.

(Pub. L. 93-400, §4, Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 98-369, div. B, title VII, §2731, July 18, 1984, 98 Stat. 1195; Pub. L. 98-577, title I, §102, Oct. 30, 1984, 98 Stat. 3067; Pub. L. 100-679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 101-510, div. A, title VIII, §806(a)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103-355, title IV, §4001, title VIII, §8001, Oct. 13, 1994, 108 Stat. 3338, 3384; Pub. L. 104-106, div. D, title XLII, §4204, Feb. 10, 1996, 110 Stat. 655; Pub. L. 106-65, div. A, title VIII, §805, Oct. 5, 1999, 113 Stat. 705; Pub. L. 108-136, div. A, title XIV, §§1411, 1433, Nov. 24, 2003, 117 Stat. 1663, 1673; Pub. L. 108-375, div. A, title VIII, §807(b), Oct. 28, 2004, 118 Stat. 2011.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

Section 2731 of Pub. L. 98-369 directed in part that this section be redesignated as section 4 of Pub. L. 93-400 to correct an inconsistency in the language of the amendment by Pub. L. 98-191, which amended this section generally but referred to it as “Sec. 3”. Since this section was enacted as section 4 of Pub. L. 93-400 no change was required.

AMENDMENTS

2004—Par. (17). Pub. L. 108-375 added par. (17).

2003—Par. (12)(F). Pub. L. 108-136, §1433, inserted “or specific outcomes to be achieved” after “performed”.

Par. (16). Pub. L. 108-136, §1411, added par. (16).

1999—Par. (12)(E). Pub. L. 106-65 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (A), (B), (C), or (D) and if the source of such services—

“(i) offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

“(ii) offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.”

1996—Par. (12)(F). Pub. L. 104-106 inserted “or market” after “catalog”.

1994—Pub. L. 103-355, §8001(b)(1), substituted “this chapter:” for “this chapter—” in introductory provisions.

Pars. (1) to (3). Pub. L. 103-355, §8001(b)(2), (3), substituted “The term” for “the term” and period for semicolon at end.

Par. (4). Pub. L. 103-355, §8001(b)(2), (4), substituted “The term” for “the term” and period for “; and” at end.

Pars. (5) to (9). Pub. L. 103-355, §8001(b)(2), (3), substituted “The term” for “the term” and period for semicolon at end.

Par. (10). Pub. L. 103-355, §8001(b)(2), (4), substituted “The term” for “the term” and period for “; and” at end.

Par. (11). Pub. L. 103-355, §8001(b)(2), which directed substitution of “The term” for “the term” in par. (11), could not be executed because phrase “the term” did not appear subsequent to amendment by Pub. L. 103-355, §4001. See below.

Pub. L. 103-355, §4001, amended par. (11) generally. Prior to amendment, par. (11) read as follows: “the term ‘small purchase threshold’ means \$25,000, adjusted on October 1 of each year divisible by 5 to the amount equal to \$25,000 in constant fiscal year 1990 dollars (rounded to the nearest \$1,000).”

Pars. (12) to (15). Pub. L. 103-355, §8001(a), added pars. (12) to (15).

1990—Par. (11). Pub. L. 101-510 added par. (11).

1988—Pars. (4) to (11). Pub. L. 100-679 redesignated pars. (5) to (11) as (4) to (10), respectively, and struck out former par. (4) which defined “single system of Government-wide procurement regulations” for purposes of this chapter.

1984—Pars. (6) to (8). Pub. L. 98-369 added pars. (6) to (8).

Pars. (9) to (11). Pub. L. 98-577 added pars. (9) to (11).

1983—Pub. L. 98-191 amended section generally, restating definitions of “executive agency” and “procurement” and inserting definitions of “procurement system”, “single-system of Government-wide procurement regulations”, and “standards”.

1979—Pub. L. 96-83 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-83 effective Oct. 1, 1979, see section 12 of Pub. L. 96-83, set out as a note under section 401 of this title.

MODIFICATION OF FEDERAL ACQUISITION REGULATIONS

Section 2752 of Pub. L. 98-369 provided that: “Not later than March 31, 1985, the single Government-wide

procurement regulation referred to in section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)) shall be modified to conform to the requirements of this title [title VII of Pub. L. 98-369, §§ 2701-2753, July 18, 1984, 98 Stat. 1175-1203] and the amendments made by this title [see Short Title of 1984 Amendment note set out under section 251 of this title]."

§ 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator

(a) There is in the Office of Management and Budget an Office of Federal Procurement Policy (hereinafter referred to as the "Office") to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies and to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 93-400, § 5, Aug. 30, 1974, 88 Stat. 797; Pub. L. 104-106, div. D, title XLIII, § 4305(a)(1), Feb. 10, 1996, 110 Stat. 665.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the 'Office')."

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

§ 405. Authority and functions of the Administrator

(a) Development of procurement policy; leadership

The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this chapter, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. These policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation and shall be followed by executive agencies in the procurement of—

- (1) property other than real property in being;
- (2) services, including research and development; and
- (3) construction, alteration, repair, or maintenance of real property.

(b) Government-wide procurement regulations

In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration

are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a) of this section, the Administrator shall, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this chapter, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

- (1) property other than real property in being;
- (2) services, including research and development; and
- (3) construction, alteration, repair, or maintenance of real property.

(c) Noninterference with executive agencies

The authority of the Administrator under this chapter shall not be construed to—

- (1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or
- (2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(d) Enumeration of included functions

The functions of the Administrator shall include—

- (1) providing leadership and ensuring action by the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;
- (2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;
- (3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;
- (4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and
- (B) ensuring executive agency compliance with the record requirements of section 417 of this title;
- (5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to—

- (A) foster and promote the development of a professional acquisition workforce Government-wide;